

FILED

AUG 07 2002

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

**IN THE MATTER OF THE AMENDED
REQUEST FOR AGENCY ACTION OF
AMERICAN GILSONITE COMPANY
FOR APPROVAL OF SELF-BONDING/
ESCROW AGREEMENT PROPOSAL
FOR ITS MINING OPERATIONS
LOCATED IN UTAH COUNTY,
UTAH**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
MODIFIED ORDER**

DOCKET NO: 2002-005

CAUSE NO: M/047/010

The Utah Division of Oil, Gas and Mining ("Division") having objected to the Board's Order of May 31, 2002, and the parties having stipulated to a modification of Paragraph 4 of the Order, and the matter having come on for hearing before the Board of Oil, Gas and Mining ("Board"), on Wednesday, July 31, 2002, at the hour of 10 AM.

The following Board members were present and participated in the hearing:

Elise L. Erler, Chair
Allan Mashburn
Stephanie Cartwright
James Peacock
Kent R. Petersen
Robert J. Bayer; and
Douglas E. Johnson

Attending and participating on behalf of the Division were Mary Ann Wright, Associate Director; and Kurt E. Seel, Esq., Assistant Attorney General; and representing the Board was Steven F. Alder, Esq., Assistant Attorney General.

ORDER

Based upon AGC's Amended Request for Agency Action, the testimony and evidence submitted, and the Findings of Fact and Conclusions of Law stated above, the Board hereby orders:

1. The Amended Request for Agency Action in this cause is granted.
2. The Self Bonding Agreement in the amount of \$189,100.00 is hereby approved.
3. The Escrow Agreement providing for an initial down payment of \$47,275.00 due and payable to the escrow agent within 15 days of the approval of this order and additional annual payments of \$47,275.00 due and payable on or before June 15th in each consecutive year until the full amount of \$189,100.00 has been paid is hereby approved. Said sum shall be provided as collateral for and timely replacement of the Self Bonding Agreement.
4. The Self Bonding Agreement and the Escrow Agreement shall contain default provisions sufficient to protect the interest of the State of Utah. Said agreements are to be reviewed and approved by Division counsel. The final Self Bonding Agreement shall be approved by Board counsel and executed by the Chair of the Board. The final Escrow Agreement shall be reviewed and approved by Division counsel, and approved by Board counsel, for consistency with this Order.

5. Pursuant to the Utah Admin. Code Rule R641-100 et seq. and Utah Code Ann. § 63-46b-6 to -10, the Board has considered and decided this matter as a formal adjudication.

6. This Findings of Fact, Conclusion of Law and Order (“Order”) is based exclusively on the evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board’s decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. § 63-46b-10 and Utah Administrative Code Rule R641-109.

7. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63-46b-10(e) to -10(g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order is issued. Utah Code Ann. § 63-46b-10 and -16. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. § 63-46b-13, entitled, “Agency review – Reconsideration,” states:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would

otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the parson making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or a person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of the month.

Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63-46b-13 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any

party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

8. The Board retains continuing jurisdiction over all the parties and over the subject matter of this cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this order by the Utah Supreme Court.

9. For all purposes, the Chair's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

Issued this 7th day of August, 2002.

**STATE OF UTAH
BOARD OF OIL, GAS & MINING**

By: Elise L. Erler
Elise L. Erler, Chair